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C O N F I D E N T I A L SECTION 01 OF 03 SARAJEVO 000441

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DEPARTMENT FOR EUR DAS DICARLO AND EUR/SCE(HOH/FOOKS); NSC
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SUBJECT: BOSNIA - SCENESETTER FOR THE FEBRUARY 26-27 PIC

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Classified By: Ambassador McElhaney. Reason 14.(b) and (d).

11. (C) SUMMARY: We expect the February 26-27 meeting of the Peace Implementation Council (PIC) to approve a one-year extension of OHR's mandate (i.e., to June 2008), though we anticipate the Russians will complicate efforts to reach consensus on this decision. High Representative Christian Schwarz-Schilling has not yet accepted that an extension requires a "fresh start" at OHR, however. His personal interests are as likely to drive his approach to certain issues, such as use of the Bonn Powers and constitutional reform, as much as his "objective assessment" about the type of OHR required for the next 16 months. Police reform talks (as of this writing) remain deadlocked, and the initialing of a Stabilization and Association Agreement in the near term appears less and less likely. The International Court of Justice's (ICJ) ruling on Bosnia's claim that Serbia and Montenegro was responsible for genocide, due on February 26, may overshadow the PIC's decisions on OHR's future. The PIC must also address a Bosnian Constitutional Court ruling that the HighRep violated the human rights of two former Republika Srpska officials he removed from office in 2004.
END SUMMARY

OHR's Future

12. (C) A consensus is emerging within the PIC to extend OHR's mandate one year (i.e., to June 2008) with a review in December 2007. The Russians are the principal holdout and will likely argue for a shorter extension (to the end of 2007) and no review. The Russians see the latter as opening the door to another extension. Though Schwarz-Schilling's assessment will recommend a one-year extension, it will remain silent on a review. Though he personally supports a review, he has told us that he "expects the Quint Political Directors to persuade the Russians" on this issue. We expect the Russians will seek to link an extension to Kosovo in order to justify an end of 2007 closure without a review.

13. (C) Schwarz-Schilling does not plan to recommend a revised OHR work plan to the PIC, but he may distribute a "food for thought" paper about what an extended OHR should focus on in the next year. We will want to ensure that this reflects U.S. priorities, notably outstanding Dayton issues, defense reform, ICTY, Brcko, and rule of law issues. OHR and our

European colleagues often interpret "rule of law" to mean "police reform." While police reform is important, our agenda is broader and includes strengthening all the of recently created state-level law enforcement and judicial institutions. OHR's extension is an opportunity to focus the international community on this agenda, and we will want to ensure discussion of OHR's future is not too EU-centric.

Schwarz-Schilling's Future and the Bonn Powers

¶4. (C/NF) Despite the clear message that it is time for a "fresh start," Schwarz-Schilling has not given up on the possibility of staying on as HighRep. The Russians have reportedly told him it would "make sense" for him to stay on, if OHR was extended only six months. Several OHR staffers tell us Schwarz-Schilling believes a prolonged delay in naming his replacement would require the the five major allies to reverse themselves and ask him to stay on rather than leave the HighRep's chair vacant. Schwarz-Schilling tells us that he was told by Berlin that "the Americans" forced him out; a message we suspect he has heard from other European capitals. This may explain his faith in European inertia regarding his replacement. Regardless, we will want to use the margins of the PIC to push the Europeans to begin thinking more seriously about a successor.

¶5. (C) We must also be mindful of attempts by Schwarz-Schilling and/or the Russians to insert language into the communique that would tie the new HighRep's hands with regards to the Bonn Powers. Schwarz-Schilling sees a PIC endorsement of his "ownership" strategy as mitigating somewhat the personal blow he suffered when the five major

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allies decided on a "fresh start" at OHR. In this context, he has raised privately with us the possibility of defining at the PIC what issues would and would not warrant use of the Bonn Powers by a future HighRep. The Russians would likely embrace such an approach, albeit for different reasons (i.e., to shield the Bosnian Serbs from political pressure for reform), or they might press independently for language designed to restrict the ability of the new HighRep to exercise the Bonn Powers.

Constitutional Reform

¶6. (C) We previewed our preliminary thinking about "next steps" on constitutional reform with Schwarz-Schilling on February 21. He appeared open to linking legislation creating phase two architecture to the U.S.-brokered package of amendments and accepted that a phase two structure must include political party leaders. We also stressed that a structure inside the EUSR did not reflect earlier agreements for a U.S.-EU-Bosnian partnership on constitutional reform. We doubt Schwarz-Schilling will raise these details during the PIC, but he will want a more detailed U.S. response to his constitutional reform proposal during his bilateral meeting with the U.S. before the PIC. In that context, he may push us to propose a faster timeline for putting phase two structures in place. At the PIC itself, we will want to ensure that the communique does not soften previous Steering Board support for the U.S.-brokered package of amendments even as it signals support for a U.S.-EU partnership for a second phase of constitutional reform.

Police Reform

¶7. (C) As of this writing, police reform political talks have yet to produce a deal that would clear the way for the initialing of a Stabilization and Association Agreement (SAA). The talks themselves represent progress, however, and it is notable that the Serbs have accepted the Police Directorate's report as a basis for reaching a deal.

Nonetheless, the fundamental problems remain; Dodik continues to try and undercut the three EU principles and the Bosniaks have yet to engage constructively. PDHR Gregorian deserves credit for reinvigorating the police reform process, but his role has also opened him up to unfair criticism from all sides. The Bosniaks and Europeans have accused him of making too many concessions to the Serbs. The current proposal reflects European willingness to retreat regularly in the face of Dodik's demands over the last year and the Bosniak decision to step back in hope that OHR would simply impose a deal to their liking rather than negotiate. Dodik accused Gregorian of cutting a "secret deal" with the Bosniaks to force more "concessions" out of him.

International Court of Justice

18. (C) On February 26, the ICJ will rule on the case concerning the "Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)," and the PIC will be expected to comment on it. OHR plans to have a legal team in Brussels to review the decision and brief the Steering Board as soon as it is published. Whatever the verdict, the PIC must balance institutional support for the ICJ and respect for its decisions with the political situation in Bosnia and the region. Our aim should be to encourage, as much as is possible, Bosnia's political leaders to respond to the ICJ ruling responsibly and realistically. We should expect to have to manage the political fallout from the ruling well beyond the PIC, however.

Human Rights, Dayton, and the Bonn Powers

19. (C) Though only announced over Presidents' Day weekend, the Constitutional Court in July ruled in favor of two Milorad Bilbija and Dragan Kalinic, two former Republika Srpska (RS) officials removed from office in 2004 by the HighRep, who had challenged their removal on human rights grounds. In brief, the court ruled that the removals

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violated the Bosnian constitution and the European Convention on Human Rights (ECHR) because the two men lacked the right to appeal the HighRep's decision (more detail provided septel). The ruling directly challenges the authority of the HighRep and undermines Dayton, and OHR is in the process of developing an options paper of proposed responses by the HighRep. As with the December 2006 challenge to Dayton by the Council of Ministers over decertified police officers (Reftels), we believe the HighRep must deliver a clear, unambiguous message that Bosnian government institutions will not be allowed to undermine Dayton or ignore their international obligations. We should use our bilateral exchange with Schwarz-Schilling to press him this point.

MCELHANEY